

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Crim. No. 1:15-cr-131
	:	
	:	
v.	:	
	:	
	:	
ANDRE MOSLEY	:	Judge Sylvia H. Rambo

MEMORANDUM

Before the court is a “Motion to Request Brady Material to Perfect Motion Pursuant to 28 U.S.C. § 2255.” (Doc. 59.) The motion is unclear as to what Mosley is challenging and what relief he seeks. While he appears to seek material that would support his exoneration of a prison infraction, a 2255 motion is not the proper form of relief as a 2255 motion challenges a conviction and sentence. *See United States v. Addonizio*, 442 U.S. 178, 179 (1979). Mosley also requests an extension of time to file a 2255 motion, seeks *Brady* material, and requests that his court to order his trial counsel to file an affidavit explaining why she did not file an appeal.

I. Discussion

A. Request for an extension of time

Mosley was sentenced on June 7, 2017, and therefore the deadline for filing a 2255 motion is June 6, 2018. In his motion, Mosley alleges that he has had some

papers destroyed by prison officials and has been in the Special Housing Unit. In light of this, he will be given until June 29, 2018 to file an appropriate motion.

B. Request for *Brady* material

Mosley's request for *Brady* material will be denied. In a habeas proceeding, a defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel fell below an objection standard of reasonableness. *Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985). A guilty plea is voluntarily and intelligently entered if it is entered into with "sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). Mosley entered a guilty plea pursuant to a plea agreement, and he has not set forth what material he should have been presented with that would have impacted on the voluntary and knowing nature of his plea. Furthermore, where a defendant waives his right to a jury trial, he also waives any accompanying constitutional guarantees. *United States v. Ruiz*, 536 U.S. 622 (2002). The request for *Brady* materials will be denied.

C. Request for affidavit

Mosley's request that this court order trial counsel to file an affidavit as to why she did not file an appeal is inappropriate and will also be denied. Should

there be a 2255 motion raising this issue and a hearing is held, trial counsel will undoubtedly be called to testify.

II. Conclusion

As stated above, Mosley's motion will be granted in part and denied in part without prejudice to Mosley filing a 2255 motion. An appropriate order will enter.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: May 16, 2018